

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 04-C-12498-RAP
)	
STEPHEN PATRICK WHITE)	DECISION AND ORDER SEALING
)	CERTAIN DOCUMENTS
Member No. 125276)	
)	
<u>A Member of the State Bar.</u>)	

I. Introduction

In May 2005, respondent **Stephen Patrick White** (respondent) was convicted of violating Vehicle Code section 23152, subdivision (b), a misdemeanor [driving with a blood alcohol concentration of .08 percent or more]. Following respondent's conviction, this matter was referred to this court for a hearing and decision as to whether the facts and circumstances surrounding his conviction involved moral turpitude or other misconduct warranting discipline and, if so found, a recommendation as to the discipline to be imposed. Thereafter, respondent participated in and successfully completed the State Bar Court's Alternative Discipline Program (ADP). Accordingly, the court hereby recommends, as set forth below, the imposition of discipline relating to a successful completion of the ADP.

II. Significant Procedural History

After the transmittal to the State Bar Court of the records of the conviction of respondent, the Review Department of the State Bar Court issued an order on July 11, 2005, referring

respondent's misdemeanor conviction for violating Vehicle Code section 23152, subdivision (b) [driving with a blood alcohol level of .08% or higher] to the Hearing Department of the State Bar Court for certain action.¹

A Notice of Hearing on Conviction was filed against respondent on August 2, 2005, and the matter was assigned to the Honorable Richard A. Honn.

On September 8, 2005, the State Bar of California, Office of the Chief trial Counsel (State Bar) transmitted evidence of the finality of respondent's conviction to the court.

After the Review Department received notice of the finality of respondent's conviction, it issued an order on September 19, 2005, augmenting its earlier reference to include a hearing and decision recommending the discipline to be imposed if the Hearing Department finds that the facts and circumstances surrounding the offense of which respondent was convicted involved moral turpitude or other misconduct warranting discipline.

Pursuant to a telephonic status conference that was held on November 28, 2005, in which respondent's attorney informed the court that respondent had requested a referral to the ADP, the court filed an order on that same date, effective immediately, referring this matter to the State Bar Court's ADP before the undersigned judge. The court also ordered an in-person Program conference to take place on December 5, 2005 before the undersigned judge. And, the matter was reassigned to the undersigned judge for all further proceedings.

Respondent contacted the State Bar's Lawyer Assistance Program (LAP) on December 6, 2005, to assist him with his substance abuse issue.

Respondent executed a Participation Plan with the LAP on November 7, 2006.

¹ At the time of the referral, the court had not received evidence that respondent's conviction was final.

In furtherance of his participation in the ADP, on August 29, 2007, respondent submitted his First Amended Nexus Statement to the court, which established a nexus between his substance abuse issue and his misconduct in this matter.

The parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) in case No. 04-C-12498 in August 2007. The Stipulation sets forth the factual findings, legal conclusions, and mitigating circumstances in this matter.

In October 2007, the parties submitted briefs to the court in which they set forth their discipline recommendations.

Thereafter, on January 3, 2008, respondent and his counsel executed the Contract and Waiver for Participation in the State Bar Court's ADP (Contract). On that same date, the court executed: (1) an order approving the parties' Stipulation; (2) the Confidential Statement of Alternative Dispositions and Orders (Confidential Statement) setting forth the discipline which would be recommended to the Supreme Court if respondent successfully completed the ADP and the discipline which would be recommended if respondent was terminated from, or failed to successfully complete, the ADP; and (3) an order accepting respondent into the ADP commencing on January 3, 2008. The Contract, Stipulation, and Confidential Statement were lodged on January 10, 2008.

Respondent thereafter participated successfully in both the State Bar's LAP and the court's ADP.

On April 5, 2011, the LAP issued a Certificate of One Year Completion in the Lawyer Assistance Program – Substance Abuse, setting forth that respondent has satisfied all lab testing requirements of the LAP Participation Agreement/Plan for one year prior to April 5, 2011, and that during this time period, there were no unauthorized substances detected; nor was LAP aware of the use of any unauthorized substances. Thereafter, at a status conference held on April 7,

2011, the court found that respondent has successfully completed the ADP. On that same date, the parties' Stipulation, which had been lodged on January 10, 2008, was filed; and this matter was submitted for decision.

III. Findings of Fact and Conclusions of Law

The Stipulation Re Facts and Conclusions of Law approved by the court and filed on April 7, 2011, is incorporated by reference as if set forth fully herein. The Stipulation sets forth the factual findings, legal conclusions, and certain aggravating and mitigating circumstances in this matter.

Respondent stipulated that on April 30, 2004, he had been stopped by a police officer after the officer observed respondent speeding and straddling lane dividers. A breath test was administered at the police station and respondent's blood alcohol content registered at .12 percent. A criminal complaint was filed in San Diego Superior Court charging respondent with driving while under the influence and driving with a blood alcohol content of .08 percent or more. The matter proceeded to trial in May 2005, and on May 23, 2005, respondent was convicted of violating Vehicle Code section 23152, subdivision (b), a misdemeanor [driving with a blood alcohol concentration of .08 percent or more].

Respondent further stipulated that the facts and circumstances surrounding his misdemeanor conviction did not involve moral turpitude, but did involve other misconduct warranting discipline.

The parties also stipulated to factors in aggravation and mitigation.

In aggravation, respondent has a record of three prior impositions of discipline. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,² std. 1.2(b)(i).) On October 5, 1995, in State Bar Court case No. 90-C-17841, respondent stipulated to a public

² All further references to standard(s) or std. are to this source.

reproved with conditions, effective October 21, 1995, for violating section 6068, subdivision (a) of the Business and Professions Code,³ arising out of 1994 convictions for driving under the influence of alcohol (with a prior conviction) and driving without a license in violation of Vehicle Code sections 23132(a) and 12500(a), respectively.

Effective January 15, 1997, in Supreme Court matter S056622, (State Bar Court case No. 93-O-19141), respondent was suspended for 18 months; the execution of that suspension was stayed; respondent was placed on probation for three years; and respondent was actually suspended for nine months and until he made specified restitution. Respondent stipulated to violations of rules 4-100(A), 4-100(B)(4), 3-700(A)(1) and (A)(2); 3-700(D)(2), and 3-100(A) of the State Bar Rules of Professional Conduct,⁴ and sections 6106, 6068, subdivisions (b), (i), (m), and (o)(3), and 6103.

Effective January 15, 1999, in Supreme Court matter S073156 (State Bar Court No. 97-N-11047), respondent was suspended for two years and until he demonstrated that he had met the requirements of standard 1.4(c)(ii); the execution of that suspension was stayed; and, respondent was placed on probation for two years with an actual suspension for six months for violating section 6103 by failing to timely file his affidavit with the State Bar Court establishing compliance with Rule of Court 955 (now rule 9.20) of the California Rules of Court.

In mitigation, respondent's misconduct did not harm the courts, the public, or any client. (Std. 1.2(e)(iii).) Respondent was candid and cooperative with the State Bar during this disciplinary proceeding. (Std. 1.2(e)(v).) Additionally, five attorneys and one member of the general community attested to respondent's good character, including professionalism,

³ Unless otherwise indicated, all further statutory references are to the Business and Professions Code.

⁴ Unless otherwise indicated, all further references to rules refer to the State Bar Rules of Professional Conduct.

willingness to help others, honesty, trustworthiness, integrity and responsibility. (Std. 1.2(e)(vi).) Respondent also took objective steps demonstrating remorse. (Std. 1.2(e)(vii).)

Furthermore, at the time respondent engaged in his misconduct, he was suffering from a substance abuse issue, and respondent's substance abuse issue directly caused the misconduct which forms the basis for this proceeding. Supreme Court case law establishes that an attorney's rehabilitation from alcoholism or other substance abuse problems can be accorded significant weight if it is established that (1) the abuse was addictive in nature; (2) the abuse causally contributed to the misconduct; and (3) the attorney has undergone a meaningful and sustained period of rehabilitation. (*Harford v. State Bar* (1990) 52 Cal.3d 93, 101; *In re Billings* (1990) 50 Cal.3d 358, 367.)

Respondent executed a Participation Plan with the LAP on November 7, 2006. The LAP issued a Certificate of One Year Participation In the Lawyer Assistance Program – Substance Use, dated January 26, 2010, which reflects, in pertinent part, that LAP is not aware of the use of any unauthorized substances by respondent for at least one year prior to this date.

Additionally, respondent successfully completed the ADP. Respondent's successful completion of the ADP, which required his successful participation in the LAP, as well as the Certificate of One Year Participation In the Lawyer Assistance Program, qualify as clear and convincing evidence that respondent no longer suffers from the substance abuse issue which led to his misconduct. Accordingly, it is appropriate to consider respondent's successful completion of the ADP as a further mitigating circumstance in this matter. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(e)(iv).)

IV. Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney but, rather, to protect the public, to preserve public confidence in the legal profession, and to maintain

the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate alternative discipline recommendations if respondent successfully completed the ADP or was terminated from, or failed to successfully complete, the ADP, the court considered the discipline recommended by the parties, as well as certain standards and case law. In particular, the court considered standards 1.2, 1.3, 1.4, 1.5, 1.6, 1.7(b), and 3.4. The court also considered and distinguished, where appropriate, *In re Kelley* (1990) 52 Cal.3d 487; *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108; and *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208.

Because respondent has now successfully completed the ADP, this court, in turn, now recommends to the Supreme Court the imposition of the lower level of discipline, set forth more fully below.

V. Recommendations

It is hereby recommended that respondent **Stephen Patrick White**, State Bar Number 125276, be suspended from the practice of law in California for two years, that execution of that period of suspension be stayed, and that he be placed on probation⁵ for a period of four years subject to the following conditions:

1. During the probation period, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
2. Within 10 days of any change, respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California (Office of Probation), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;

⁵ The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

3. Within 30 days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request;
4. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the period of probation. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the period of probation and no later than the last day of the probation period;

5. Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation which are directed to respondent personally or in writing relating to whether respondent is complying or has complied with the probation conditions;
6. Within one year of the effective date of the discipline herein, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session;
7. Respondent must comply with all conditions of probation imposed in the underlying criminal matters and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation; and
8. Respondent must comply with all provisions and conditions of his Participation Agreement/Plan with the Lawyer Assistance Program (LAP) and must provide the Office of Probation with certification of completion of the LAP. Respondent must immediately report any non-compliance with any provision(s) or condition(s) of his Participation Agreement/Plan to the Office of Probation. Respondent must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of respondent's participation in the LAP and his compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. Respondent will be relieved of this condition upon providing to the Office of Probation satisfactory certification of completion of the LAP.

At the expiration of the period of probation, if Stephen Patrick White has complied with all conditions of probation, the three-year period of stayed suspension will be satisfied and that suspension will be terminated.

A. Multistate Professional Responsibility Examination

It is further recommended that Stephen Patrick White be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court order imposing discipline in this matter and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. Failure to do so may result in suspension.

B. Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

VI. Direction Re Decision and Order Sealing Certain Documents

The court directs a court case administrator to file this Decision and Order Sealing Certain Documents. Thereafter, pursuant to rule 5.388(c) (former rule 806(c)) of the Rules of Procedure of the State Bar of California (Rules of Procedure),⁶ all other documents not previously filed in this matter are ordered sealed pursuant to 5.12 (former rule 23) of the Rules of Procedure.

It is further ordered that protected and sealed material will only be disclosed to: (1) parties to the proceeding and counsel; (2) personnel of the Supreme Court, the State Bar Court and independent audiotape transcribers; and (3) personnel of the Office of Probation when necessary for their official duties. Protected material will be marked and maintained by all

⁶ Effective January 1, 2011, new Rules of Procedure of the State Bar of California became effective.

authorized individuals in a manner calculated to prevent improper disclosures. All persons to whom protected material is disclosed will be given a copy of this order sealing the documents by the person making the disclosure.

IT IS SO ORDERED.

Dated: June 27, 2011.

RICHARD A. PLATEL
Judge of the State Bar Court